

AMENDED IN SENATE APRIL 17, 2002

AMENDED IN SENATE APRIL 15, 2002

**SENATE BILL**

**No. 2050**

**Introduced by Senator Sher**

February 22, 2002

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An act to amend ~~Section~~ *Sections 13269 and 13385* of the Water Code, relating to water quality.

LEGISLATIVE COUNSEL'S DIGEST

SB 2050, as amended, Sher. Water quality.

~~The Porter-Cologne~~

*(1) Under the Porter-Cologne Water Quality Control Act (Water Quality Act), the State Water Resources Control Board and the California regional water quality control boards are among the principal agencies with authority over water quality. Under the Water Quality Act, persons discharging waste are required to file with the appropriate regional board a report of the discharge and the discharge is subject to waste discharge requirements prescribed by that regional board. Under the Water Quality Act, persons are prohibited from initiating a new discharge of waste, or making any material changes in any discharge of waste, prior to the filing of the waste discharge report, and after the filing of that report unless waste discharge requirements have been prescribed or, under certain circumstances, 120 days have elapsed since the filing of that report. The Water Quality Act authorizes the regional boards to waive these requirements as to a specific discharge or type of discharge if the waiver is not against the public interest.*

*This bill would authorize the regional board to waive the described requirements as to a specific discharge or a specific type of discharge if the regional board first determines that the waiver and any conditions placed on the waiver are consistent with the regional water quality control plan and will not cause a violation of applicable water quality objectives, rather than if the waiver is not against the public interest.*

(2) ~~The Water Quality Control Act (Water Act)~~ prescribes civil penalties, including, with certain exceptions, an assessment of a mandatory minimum penalty of \$3,000 for the first serious violation, as defined, of specific water discharge requirements set forth in the Water *Quality* Act or the *federal* Clean Water Act and each additional serious violation in any period of 6 consecutive months, as defined, except that if no serious violation has occurred in the prior 6 months, the State Water Resources Control Board or a regional water quality control board is authorized, in lieu of assessing the penalty applicable to the first serious violation, to require the discharger to spend an amount equal to the penalty for a supplemental environmental project, as defined, or to develop a pollution prevention plan.

The bill would delete the above described exception and, instead, would authorize the state board or regional board, in all cases of penalties under the Water *Quality* Act or the Clean Water Act, in lieu of assessing some portion of a penalty, to require the discharger to spend an amount equal to that portion for a supplemental environmental project in accordance with the enforcement policy of the state board and any applicable guidance document. The bill would limit the portion of the penalty to be replaced by a supplemental environmental project to an amount not to exceed 50% of the full penalty.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. *Section 13269 of the Water Code is amended to*  
2 *read:*  
3 13269. (a) ~~On and after January 1, 2000, the provisions of~~  
4 ~~subdivisions~~ *Subdivisions* (a) and (b) of Section 13260,  
5 subdivision (a) of Section 13263, or subdivision (a) of Section  
6 13264 may be waived by a regional board as to a specific discharge  
7 or a specific type of discharge if the ~~waiver is not against the public~~  
8 ~~interest~~ *regional board first determines that the waiver and any*

1 *conditions placed on the waiver are consistent with the regional*  
2 *water quality control plan and will not cause a violation of*  
3 *applicable water quality objectives.* Waivers for specific types of  
4 discharges may not exceed five years in duration, but may be  
5 renewed by a regional board. The waiver shall be conditional and  
6 may be terminated at any time by the board.

7 (b) A waiver in effect on January 1, 2000, shall remain valid  
8 until January 1, 2003, unless the regional board terminates that  
9 waiver prior to that date. All waivers that were valid on January  
10 1, 2000, and granted an extension until January 1, 2003, and not  
11 otherwise terminated, may be renewed by a regional board in  
12 five-year increments.

13 (c) Upon notification of the appropriate regional board of the  
14 discharge or proposed discharge, except as provided in subdivision  
15 (d), the provisions of subdivisions (a) and (b) of Section 13260,  
16 subdivision (a) of Section 13263, and subdivision (a) of Section  
17 13264 shall not apply to discharge resulting from any of the  
18 following emergency activities:

19 (1) Immediate emergency work necessary to protect life or  
20 property or immediate emergency repairs to public service  
21 facilities necessary to maintain service as a result of a disaster in  
22 a disaster-stricken area in which a state of emergency has been  
23 proclaimed by the Governor pursuant to Chapter 7 (commencing  
24 with Section 8550) of Division 1 of Title 2 of the Government  
25 Code.

26 (2) Emergency projects undertaken, carried out, or approved  
27 by a public agency to maintain, repair, or restore an existing  
28 highway, as defined in Section 360 of the Vehicle Code, except for  
29 a highway designated as an official state scenic highway pursuant  
30 to Section 262 of the Streets and Highways Code, within the  
31 existing right-of-way of the highway, damaged as a result of fire,  
32 flood, storm, earthquake, land subsidence, gradual earth  
33 movement, or landslide within one year of the damage. This  
34 paragraph does not exempt from this section any project  
35 undertaken, carried out, or approved by a public agency to expand  
36 or widen a highway damaged by fire, flood, storm, earthquake,  
37 land subsidence, gradual earth movement, or landslide.

38 (d) Subdivision (c) is not a limitation of the authority of a  
39 regional board under subdivision (a) to determine that any  
40 provision of this division shall not be waived or to establish

1 conditions of a waiver. Subdivision (c) shall not apply to the extent  
2 that it is inconsistent with any waiver or other order or prohibition  
3 issued under this division.

4 (e) The regional boards and the state board shall require  
5 compliance with the conditions pursuant to which waivers are  
6 granted under this section.

7 (f) Prior to renewing any waiver for a specific type of discharge  
8 established under this section, the regional boards shall review the  
9 terms of the waiver policy at a public hearing. At the hearing, a  
10 regional board shall determine whether the discharge for which the  
11 waiver policy was established should be subject to general or  
12 individual waste discharge requirements.

13 *SEC. 2.* Section 13385 of the Water Code is amended to read:

14 13385. (a) Any person who violates any of the following  
15 shall be liable civilly in accordance with this section:

16 (1) Section 13375 or 13376.

17 (2) Any waste discharge requirements or dredged and fill  
18 material permit.

19 (3) Any requirements established pursuant to Section 13383.

20 (4) Any order or prohibition issued pursuant to Section 13243  
21 or Article 1 (commencing with Section 13300) of Chapter 5, if the  
22 activity subject to the order or prohibition is subject to regulation  
23 under this chapter.

24 (5) Any requirements of Section 301, 302, 306, 307, 308, 318,  
25 or 405 of the Clean Water Act, as amended.

26 (6) Any requirement imposed in a pretreatment program  
27 approved pursuant to waste discharge requirements issued under  
28 Section 13377 or approved pursuant to a permit issued by the  
29 administrator.

30 (b) Civil liability may be imposed by the superior court in an  
31 amount not to exceed the sum of both of the following:

32 (1) Twenty-five thousand dollars (\$25,000) for each day in  
33 which the violation occurs.

34 (2) Where there is a discharge, any portion of which is not  
35 susceptible to cleanup or is not cleaned up, and the volume  
36 discharged but not cleaned up exceeds 1,000 gallons, an additional  
37 liability not to exceed twenty-five dollars (\$25) multiplied by the  
38 number of gallons by which the volume discharged but not cleaned  
39 up exceeds 1,000 gallons.

1 The Attorney General, upon request of a regional board or the  
2 state board, shall petition the superior court to impose the liability.

3 (c) Civil liability may be imposed administratively by the state  
4 board or a regional board pursuant to Article 2.5 (commencing  
5 with Section 13323) of Chapter 5 in an amount not to exceed the  
6 sum of both of the following:

7 (1) Ten thousand dollars (\$10,000) for each day in which the  
8 violation occurs.

9 (2) Where there is a discharge, any portion of which is not  
10 susceptible to cleanup or is not cleaned up, and the volume  
11 discharged but not cleaned up exceeds 1,000 gallons, an additional  
12 liability not to exceed ten dollars (\$10) multiplied by the number  
13 of gallons by which the volume discharged but not cleaned up  
14 exceeds 1,000 gallons.

15 (d) For purposes of subdivisions (b) and (c), the term  
16 “discharge” includes any discharge to navigable waters of the  
17 United States, any introduction of pollutants into a publicly owned  
18 treatment works, or any use or disposal of sewage sludge.

19 (e) In determining the amount of any liability imposed under  
20 this section, the regional board, the state board, or the superior  
21 court, as the case may be, shall take into account the nature,  
22 circumstances, extent, and gravity of the violation or violations,  
23 whether the discharge is susceptible to cleanup or abatement, the  
24 degree of toxicity of the discharge, and, with respect to the  
25 violator, the ability to pay, the effect on its ability to continue its  
26 business, any voluntary cleanup efforts undertaken, any prior  
27 history of violations, the degree of culpability, economic benefit  
28 or savings, if any, resulting from the violation, and other matters  
29 that justice may require. At a minimum, liability shall be assessed  
30 at a level that recovers the economic benefits, if any, derived from  
31 the acts that constitute the violation.

32 (f) For purposes of this section, a single operational upset that  
33 leads to simultaneous violations of more than one pollutant  
34 parameter shall be treated as a single violation.

35 (g) Remedies under this section are in addition to, and do not  
36 supersede or limit, any other remedies, civil or criminal, except  
37 that no liability shall be recoverable under Section 13261, 13265,  
38 13268, or 13350 for violations for which liability is recovered  
39 under this section.

(h) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j) and (k), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for the first serious violation and each additional serious violation in any period of six consecutive months.

(2) For the purposes of this section, the following terms have the following meanings:

(A) A “serious violation” means any waste discharge that exceeds the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

(B) A “supplemental environmental project” means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under Section 13385.

(C) A “period of six consecutive months” means the period beginning on the day following the date on which a serious violation or one of the violations described in subdivision (i) occurs and ending 180 days after that date.

(i) Notwithstanding any other provision of this division, and except as provided in subdivisions (j) and (k), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

(1) Exceeds a waste discharge requirement effluent limitation.

(2) Fails to file a report pursuant to Section 13260.

(3) Files an incomplete report pursuant to Section 13260.

(4) Exceeds a toxicity discharge limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

(j) Subdivisions (h) and (i) do not apply to any of the following:

(1) A violation caused by one or any combination of the following:

(A) An act of war.

(B) An unanticipated, grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(C) An intentional act of a third party, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(D) A bypass of a treatment facility located in the County of Los Angeles during the 2001 calendar year if the applicable waste discharge requirements incorporate a provision for the bypass, and that bypass meets the conditions set forth in Section 122.41 (m)(4) of Title 40 of the Code of Federal Regulations and any more stringent conditions incorporated into the waste discharge requirements and the bypass has been approved by the regional board as meeting those conditions.

(2) (A) Except as provided in subparagraph (B), a violation of an effluent limitation where the waste discharge is in compliance with either a cease and desist order issued pursuant to Section 13301 or a time schedule order issued pursuant to Section 13300, if all of the following requirements are met:

(i) The cease and desist order or time schedule order is issued after January 1, 1995, but not later than July 1, 2000, specifies the actions that the discharger is required to take in order to correct the violations that would otherwise be subject to subdivisions (h) and (i), and the date by which compliance is required to be achieved and, if the final date by which compliance is required to be achieved is later than one year from the effective date of the cease and desist order or time schedule order, specifies the interim requirements by which progress toward compliance will be measured and the date by which the discharger will be in compliance with each interim requirement.

(ii) The discharger has prepared and is implementing in a timely and proper manner, or is required by the regional board to prepare and implement, a pollution prevention plan that meets the requirements of Section 13263.3.

(iii) The discharger demonstrates that it has carried out all reasonable and immediately feasible actions to reduce

1 noncompliance with the waste discharge requirements applicable  
2 to the waste discharge and the executive officer of the regional  
3 board concurs with the demonstration.

4 (B) Subdivisions (h) and (i) shall become applicable to a waste  
5 discharge on the date the waste discharge requirements applicable  
6 to the waste discharge are revised and reissued pursuant to Section  
7 13380, unless the regional board does all of the following on or  
8 before that date:

9 (i) Modifies the requirements of the cease and desist order or  
10 time schedule order as may be necessary to make it fully consistent  
11 with the reissued waste discharge requirements.

12 (ii) Establishes in the modified cease and desist order or time  
13 schedule order a date by which full compliance with the reissued  
14 waste discharge requirements shall be achieved. For the purposes  
15 of this subdivision, the regional board may not establish this date  
16 later than five years from the date the waste discharge  
17 requirements were required to be reviewed pursuant to Section  
18 13380. If the reissued waste discharge requirements do not add  
19 new effluent limitations or do not include effluent limitations that  
20 are more stringent than those in the original waste discharge  
21 requirements, the date shall be the same as the final date for  
22 compliance in the original cease and desist order or time schedule  
23 order or five years from the date that the waste discharge  
24 requirements were required to be reviewed pursuant to Section  
25 13380, whichever is earlier.

26 (iii) Determines that the pollution prevention plan required by  
27 clause (ii) of subparagraph (A) is in compliance with the  
28 requirements of Section 13263.3 and that the discharger is  
29 implementing the pollution prevention plan in a timely and proper  
30 manner.

31 (3) A violation of an effluent limitation where the waste  
32 discharge is in compliance with either a cease and desist order  
33 issued pursuant to Section 13301 or a time schedule order issued  
34 pursuant to Section 13300, if all of the following requirements are  
35 met:

36 (A) The cease and desist order or time schedule order is issued  
37 on or after July 1, 2000, and specifies the actions that the  
38 discharger is required to take in order to correct the violations that  
39 would otherwise be subject to subdivisions (h) and (i).



(B) The regional board finds that, for one of the following reasons, the discharger is not able to consistently comply with one or more of the effluent limitations established in the waste discharge requirements applicable to the waste discharge:

(i) The effluent limitation is a new, more stringent, or modified regulatory requirement that has become applicable to the waste discharge after the effective date of the waste discharge requirements and after July 1, 2000, new or modified control measures are necessary in order to comply with the effluent limitation, and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(ii) New methods for detecting or measuring a pollutant in the waste discharge demonstrate that new or modified control measures are necessary in order to comply with the effluent limitation and the new or modified control measures cannot be designed, installed, and put into operation within 30 calendar days.

(iii) Unanticipated changes in the quality of the municipal or industrial water supply available to the discharger are the cause of unavoidable changes in the composition of the waste discharge, the changes in the composition of the waste discharge are the cause of the inability to comply with the effluent limitation, no alternative water supply is reasonably available to the discharger, and new or modified measures to control the composition of the waste discharge cannot be designed, installed, and put into operation within 30 calendar days.

(C) The regional board establishes a time schedule for bringing the waste discharge into compliance with the effluent limitation that is as short as possible, taking into account the technological, operational, and economic factors that affect the design, development, and implementation of the control measures that are necessary to comply with the effluent limitation. For the purposes of this subdivision, the time schedule may not exceed five years in length. If the time schedule exceeds one year from the effective date of the order, the schedule shall include interim requirements and the dates for their achievement. The interim requirements shall include both of the following:

(i) Effluent limitations for the pollutant or pollutants of concern.

(ii) Actions and milestones leading to compliance with the effluent limitation.

1 (D) The discharger has prepared and is implementing in a  
2 timely and proper manner, or is required by the regional board to  
3 prepare and implement, a pollution prevention plan pursuant to  
4 Section 13263.3.

5 (k) In lieu of assessing all or a portion of the mandatory  
6 minimum penalties pursuant to subdivisions (h) and (i) against a  
7 POTW serving a small community, as defined by subdivision (b)  
8 of Section 79084, the state board or the regional board may elect  
9 to require the POTW to spend an equivalent amount toward the  
10 completion of a compliance project proposed by the POTW, if the  
11 state or regional board finds all of the following:

12 (1) The compliance project is designed to correct the violations  
13 within five years.

14 (2) The compliance project is in accordance with the  
15 enforcement policy of the state board.

16 (3) The POTW has demonstrated that it has sufficient funding  
17 to complete the compliance project.

18 (l) The Attorney General, upon request of a regional board or  
19 the state board, shall petition the appropriate court to collect any  
20 liability or penalty imposed pursuant to this section. Any person  
21 who fails to pay on a timely basis any liability or penalty imposed  
22 under this section shall be required to pay, in addition to that  
23 liability or penalty, interest, attorneys' fees, costs for collection  
24 proceedings, and a quarterly nonpayment penalty for each quarter  
25 during which the failure to pay persists. The nonpayment penalty  
26 shall be in an amount equal to 20 percent of the aggregate amount  
27 of the person's penalty and nonpayment penalties that are unpaid  
28 as of the beginning of the quarter.

29 (m) Funds collected as penalties pursuant to this section shall  
30 be deposited in the State Water Pollution Cleanup and Abatement  
31 Account, except that the state board or regional board may, in lieu  
32 of assessing some portion of a penalty, require the discharger to  
33 spend an amount equal to that portion for a supplemental  
34 environmental project in accordance with the enforcement policy  
35 of the state board and any applicable guidance document. The  
36 portion of the penalty to be replaced by a supplemental  
37 environmental project shall not exceed 50 percent of the full  
38 amount of the penalty.

1 (n) (1) The state board shall report annually to the Legislature  
2 regarding its enforcement activities. The reports shall include all  
3 of the following:

4 (A) A compilation of the number of violations of waste  
5 discharge requirements in the previous year.

6 (B) A record of the formal and informal compliance and  
7 enforcement actions taken for each violation.

8 (C) An analysis of the effectiveness of current enforcement  
9 policies, including mandatory minimum penalties.

10 (D) Recommendations, if any, necessary for improvements to  
11 the enforcement program in the following year.

12 (2) The report shall be submitted to the Chairperson of the  
13 Assembly Committee on Environmental Safety and Toxic  
14 Materials and the Chairperson of the Senate Committee on  
15 Environmental Quality on or before March 1, 2001, and annually  
16 thereafter.

